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2007-09-25 2007 GUIDO-CMS PAGE 02/05

Appl. 10/699,187  
Applicant: Guido

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re The US patent application of )  
Applicant: John Guido ) Date: 09/08/2007  
Serial No.: 10/699,187 ) Group Art Unit:1761  
Filed: 11/01/2003 ) Examiner: Kelly Mahafkey  
Title: Method for Collecting and ) Docket No.: UT09042003  
Packaging of fresh Produce. ) Customer No.: 31105

DECLARATION UNDER 37 CFR § 1.132

I, Chris Rufer, hereby declare that I am the founder, owner and President of The Morning Star Packing Company ("Morning Star.") Morning Star is the largest tomato processing company in the world. Morning Star is one of the most innovative in the entire tomato processing industry and is always seeking ways to reduce costs, improve efficiencies, develop economies of scale, and develop new tomato products for the bulk ingredients and food service markets.

I further declare that I have reviewed the cited references of Bettencourt et al. (US 3,986,561), Studer (US 4,232,506); Dall'Argine et al. (US 1,878,996), Verhaeghe (US 2002/0170398A1) Floyd et al. (US 5,505,950) Sanders et al. (6,213,302) and the non-patent reference to Cruess.

I further declare that consolidating fresh tomato processing with a shelf stable tomato processing is not obvious to those skilled in the art for the reasons stated below.

Sent By: MORNING STAR-SACTO; 9169232648; Sep-17-07 11:06PM; Page 3/5  
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GUIDO-CMS PAGE 03/05

Appl. 10/699,187  
Applicant: Guido

1 Fresh tomato processing is a completely separate industry from shelf  
2 stable processing and requires different business models, marketing, capital  
3 equipment investment and distribution channels than shelf stable processing.

4 Fresh tomato products have a short shelf life which requires the rapid  
5 transport of finished products to market to avoid spoilage. Shelf stable  
6 processed products however, have a long shelf life and may be stored for  
7 significantly greater periods of time without concern of spoilage.

8 Shelf stable processing for tomatoes is all performed during a short  
9 production period during the summer months that typically lasts 80 to 100  
10 days. During this short window of production, the entire crop is processed  
11 and stored in warehouses and then distributed to customers over a 12 month  
12 period. Fresh produce processing is generally performed on a continuous  
13 basis year round in much smaller volumes since the fresh produce product  
14 needs to reach its market while still fresh. An oversupply of finished fresh  
15 produce products to markets results in quick price erosion and spoilage. Such  
16 is not generally a concern for shelf stable products due to the ability to  
17 store the finished products and maintain balanced pricing levels based on  
18 market demand over time, rather than available supplies of fresh produce.

19 In all cases, once the shelf stable processing tomato crop has been  
20 harvested and processed, the facilities are shut down and sit largely idle  
21 until the next harvest season.

22 There is little commonality in processing equipment. Shelf stable  
23 processing plants require considerable capital investment and are energy use  
24 intensive requiring larger and more centralized plants to maximize efficiency  
25 and distribution. However, fresh produce processing facilities requires much

Sent By: MORNING STAR-SACTO; 9169232648; Sep-17-07 11:07PM; Page 4/5  
GUIDO-GMS PAGE 04/05

Appl. 10/699,187  
Applicant: Guido

1 less capital investment in plant equipment and are far less expensive to  
2 operate allowing many smaller facilities to be utilized and operated  
3 independently to supply more localized or regional markets.

4 The current harvesting techniques and volumes of produce harvested for  
5 the two industries are entirely different. Harvesting of fresh produce  
6 (particularly tomatoes) is performed largely by hand to prevent damage to the  
7 produce while produce designated for shelf stable processing is machine  
8 harvested in huge volumes to ensure efficient use of the packaging plant  
9 (i.e., an energy intensive process.)

10 Prior to the inventor's recommendation, our company has not considered  
11 combining fresh tomato processing with our shelf stable tomato processing.

12 For at least the reasons set forth above, one skilled in the art of  
13 fresh produce processing would not be familiar with the requirements or have  
14 any motivation to consolidate fresh produce processing with shelf stable  
15 produce processing and visa versa. There simply is no obvious motivation for  
16 consolidating fresh produce processing with shelf stable processing

17 I, Chris Rufer, hereby declare that all statements made herein of my  
18 own knowledge are true and that all statements made on information and belief  
19 are believed to be true; and further that these statements were made with the  
20 knowledge that statements and the like so made are punishable by fine or  
21 imprisonment, or both, under 18 U.S.C. 1001 and that such willful false  
22 statements may jeopardize the validity of the application or any patent  
23 issued thereon.

24  
25 Signature  Date 9/17/07

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Sep-17-07 11:07PM;

Page 5/5

PAGE 05/05

Appl. 10/699,187  
Applicant: Guido

- 1 Mr. Chris Rufer
- 2 President,
- 3 Morning Star Packing Company
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5 Respectfully submitted this date of 9/25/07

- 6 Philip A. Steiner
- 7 Philip A. Steiner, Esq.
- 8 Reg. No. 47,967
- 9 Attorney for Applicant.
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Appl. 10/699,187  
Applicant: Guido

## 1 Appendix - Chris Rufer/Morning Star Background

2 Mr. Rufer holds a BA in Economics (1972) and a MBA in Finance &  
3 Corporate Planning (1975), both from the University of California. He also  
4 holds a MS in Agricultural Sciences.

5 Mr. Rufer founded The Morning Star Company in 1970, driving one truck  
6 hauling tomatoes and peaches. He now designs, constructs and operates the  
7 company's food processing facilities. The company's principle business is  
8 agribusiness development and management in the processing tomato industry.  
9 The company has founded, and is the Managing Partner/Member of six  
10 enterprises. Mr. Rufer currently serves as President, Chief Executive Officer  
11 and owner.

12 Morning Star accounts for over 30% of the California processing tomato  
13 production, supplying 45% of the U.S. ingredient tomato paste and diced  
14 tomato markets, with sales of approximately \$450 million.

15 In 1982, Mr. Rufer founded a tomato paste processing plant with three  
16 grower investors, and originated and implemented two important innovations in  
17 the tomato industry; namely, (1) the dedicated production and marketing of  
18 industrial tomato paste and (2) the marketing of tomato paste in the "300  
19 gallon bag-in-box."

20 As tomato paste requirements grew The Morning Star Packing Company-Los  
21 Banos was founded and built in 1990. Through innovative thinking, common  
22 sense, and experience we improved the quality and lowered our cost of  
23 producing tomato paste. This facility processes approximately 530 tons of  
24 tomatoes (180,000 pounds of tomato paste) per hour.

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Appl. 10/699,187  
Applicant: Guido

1 In 1995, The Morning Star Packing Company-Williams was built. The Williams  
2 facility combines state of the art technology with economies of scale.

3 This facility processes approximately 630 tons of tomatoes (200,000  
4 pounds of tomato paste) per hour, making it the largest tomato processing  
5 facility in California. Morning Star also established the California Sun  
6 Harvesting Company (Cal-Sun) in a partnership with prominent tomato growers  
7 primarily to reduce the cost of tomato harvesting and create efficiencies in  
8 the harvesting, trucking and the processing of tomatoes.

9 In 2002, Morning Star founded Liberty Packing Company, Santa Nella. The  
10 original plant was built in 1975, but completely revamped in 2002. Liberty  
11 Packing does all the diced processing for Morning Star which has been doing  
12 bulk diced products at separate facilities since 1993.

13 At all Morning Star facilities, we emphasize innovative thought, and we  
14 strive to use available resources and technology to their fullest potential  
15 in order to continuously improve quality, productivity and service for our  
16 customer.

17 As important as quality, service and price are, we know there is more.  
18 To remain competitive for the long term, we must be innovative. That is why  
19 we rigorously maintain our position as the major force developing and  
20 implementing new and improved technology in our industry.

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22 Additional information is available at URL: [www.morningstarco.com](http://www.morningstarco.com)

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